IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7095 OF 2006

Maharashtra Samaj Seva Sangh & Ors. ....Petitioners
V/s.
Smt.Ratnamala H. Pardeshi & Anr. ....Respondents

Mr.V.V. Pai for the Petitioners.

Mr.M.P. Vashi i/b M/s.M.P. Vashi & Associates for Respondent No.1.

Mr.P.P. Kakade, AGP for Respondent No.2.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 28TH MARCH, 2007.

P.C. :

1. Rule. Heard forthwith.

2. The Petitioners approached this Court against the order passed by the Divisional Social Welfare Officer, Nashik in Appeal No.1 of 2005. Respondent No.1 was the Appellant before the learned Authority. The grievance of Respondent No.1 was that her termination was illegal and consequently the Appeal. The learned Authority after hearing the parties, was pleased to pass the following order :-

"The Appellant has been appointed on a

reserved post and shall be continued till the regular candidate is available from the said reserved category and in future by whatsoever reason and a priority be given appointment on the available post."

3. The question that has arisen is whether it was within the jurisdiction of the Authority to pass such an order. Respondent No.1 is not in the employment since 30.4.1992. If it was found by the learned Authority, that the termination was illegal then the proper order ought to have been to set aside the termination and direct the reinstatement or other relief. If the Authority had arrived at a conclusion that there was no regular appointment, the question of passing the order, which is impugned, would not have been arrived. Any appointment has to be by following due procedure. The direction issued is really contrary to the said due procedure. The direction to implement the resolution in every category which may be available is not consistent with law. It was therefore, not within the jurisdiction of the Authority to have passed such an order which would amount to denying equal opportunity to other candidates who may become eligible when the posts became vacant to apply for the said post.

4. Considering the above, in our opinion, this would be a fit case for us to set aside the observations reproduced in paragraph 2 of order dated 5.7.2006. It is however made clear that if the Petitioners apply for the post, they shall be considered on their own merit.

5. Rule is made absolute accordingly with no orders to costs.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)